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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

11 Plaintiff,

12 v.

13 IVAN CERNA, et al.,

14 Defendants.
15 _____/

**ORDER RE DEFENDANT
HERRERA'S REQUEST
FOR RECONSIDERATION
AND CLARIFICATION**

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17 Counsel for defendant Herrera filed two *ex parte* motions on July 10 (the deadline for
18 the filing of Stage Two motions). A prior order denied the motions on the grounds that the
19 Court could not address the issues counsel raised on an entirely secret, *ex parte* and under seal
20 basis. The order gave counsel the option of withdrawing the motions or filing them publicly.
21 Counsel has now filed a request for reconsideration of that ruling in which he asks that the two
22 motions be lodged *ex parte* at this time only to reserve the issues, but that the motions be
23 litigated sometime in the future when (in counsel's view) the issues become ripe for
24 adjudication.

25 The request for reconsideration is **DENIED**. The motions are within the ambit of Stage
26 Two motions and must be filed at this time. Counsel, however, may have yet one more
27 opportunity to file the motions publicly if he wishes to do so. Counsel must file the motions by
28 **WEDNESDAY, AUGUST 5, 2009, AT NOON** (in which case an expedited briefing schedule will be

1 established). Otherwise, the motions will be deemed withdrawn. In that instance, the motions
2 will remain filed for the record only but will be terminated.

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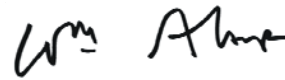
4 Counsel also requests clarification of the September 30, 2009, deadline in the final
5 scheduling order. The scheduling order stated (Dkt. No. 265):

6 14. To address a cascade of ever-growing superseding
7 indictments, any additional charges added to this case after
8 **SEPTEMBER 30, 2009**, shall be presumptively severed. This is
9 without prejudice to filing charges against others in a separate
10 indictment in a new action. This prosecution has been pending
11 since October 16, 2008. Allowing until the end of September
12 2009 will give the government ample time to make whatever
13 further additions it deems necessary to the present pleading.

14 Contrary to counsel, the government can add new charges against already indicted defendants
15 after September 30, 2009, but those charges will presumptively be severed. The Court cannot
16 prevent the government from bringing new charges against defendants already indicted herein if
17 it so chooses. The Court can, however, require in appropriate circumstances that any such new
18 charges be severed and addressed in a different trial. The final scheduling order therefore states
19 that "any additional charges added to this case after **SEPTEMBER 30, 2009**, shall be
20 presumptively severed."

21 **IT IS SO ORDERED.**

22 Dated: August 3, 2009.



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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE